CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. [illegible] 264

FIRST NATIONAL BANK IN ST. LOUIS, PLAINTIFF IN ERROR,

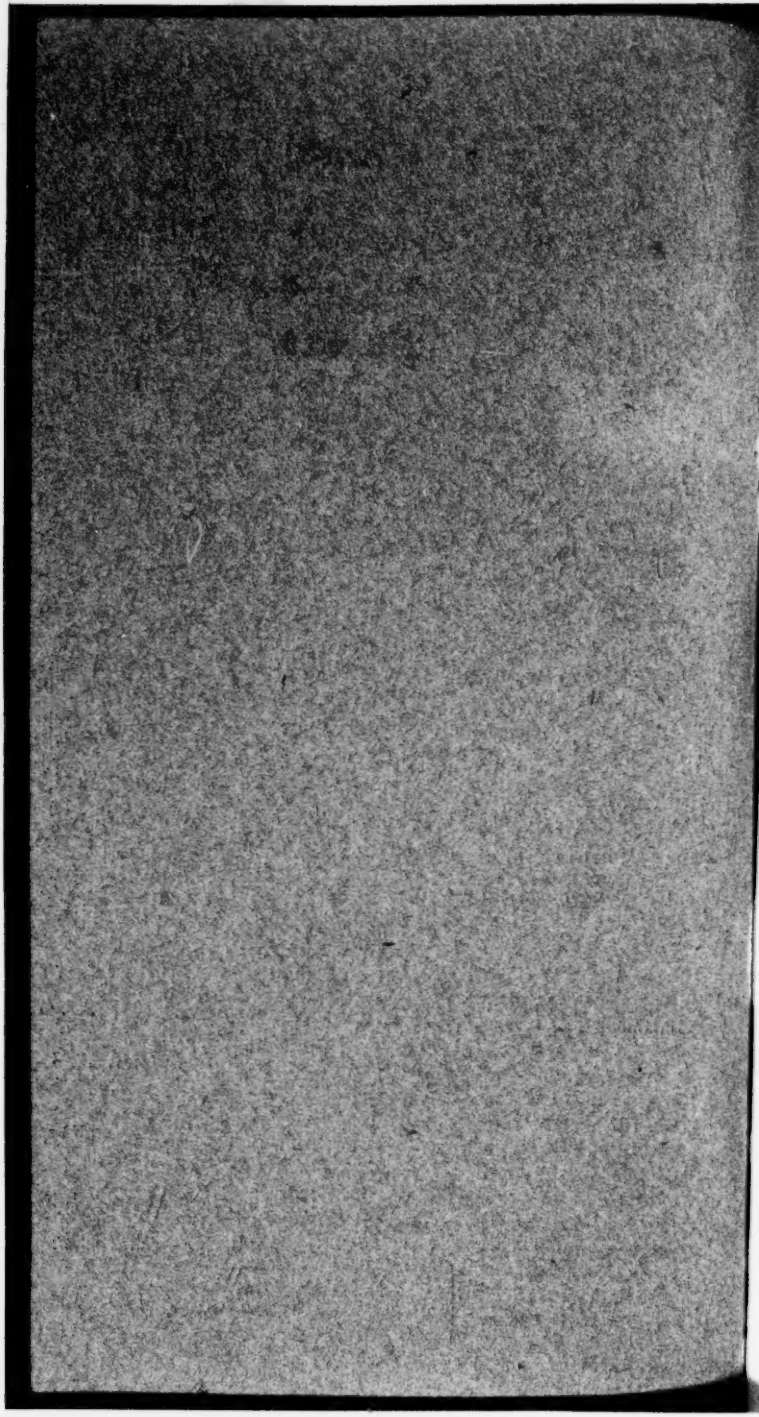
vs.

STATE OF MISSOURI AT THE INFORMATION OF JESSE W. BARRETT, ATTORNEY GENERAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED MARCH 31, 1903.

(20,466)



(29,469)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 919.

FIRST NATIONAL BANK IN ST. LOUIS, PLAINTIFF IN ERROR,

vs.

STATE OF MISSOURI AT THE INFORMATION OF JESSE W. BARRETT, ATTORNEY GENERAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1923.

1 **Caption.**

UNITED STATES OF AMERICA,
State of Missouri, ss:

Be it remembered That, heretofore, and on the 27th day of June, 1922, there was filed in the office of the Clerk of the Supreme Court of the State of Missouri, in a cause entitled "State of Missouri, by Jesse W. Barrett, Attorney General, ex inf., vs. First National Bank in St. Louis, a Corporation," No. 23,753, an information in the nature of quo warranto, which said information in the nature of quo Warranto is in the words and figures following, to-wit:

IN THE

Supreme Court of Missouri, en Banc, April Term, 1922.

STATE OF MISSOURI, by JESSE W. BARRETT, Attorney General, ex Inf.,

vs.

FIRST NATIONAL BANK IN ST. LOUIS, a Corporation, Respondent.

Information.

[Filed June 27, 1922.]

"Comes now Jesse W. Barrett, Attorney-General of the State of Missouri, ex officio, and informs the Court that the First National Bank in St. Louis is a banking association incorporated under
2 the laws of the United States and engaged in conducting a general banking business at the City of St. Louis, Missouri, and that pursuant to its charter and the law under which it stands incorporated it is required to transact its business at an office or banking house located in the place specified in its organization certificate, which place so specified is the City of St. Louis, Missouri, and that pursuant to said authority it selected and established and for several years past has conducted and is now conducting its business at a banking house located at the southwest corner of Broadway and Locust street in said City of St. Louis.

"Your informant further states that notwithstanding the foregoing, the said First National Bank in St. Louis did, on or about the 15th day of June, 1922, illegally open a branch bank for conducting a general banking business at No. 818 Olive street, St. Louis, Missouri, in a separate building located several blocks from the banking house before mentioned, which said branch bank it is now conducting and proposes to continue to conduct and where it is engaged in the business of banking, discounting bills, notes and other evidences of debt, receiving deposits and paying out the same upon check, buying and selling bills of exchange and lending money.

"Your informant further states that the said act and conduct of the First National Bank in opening and conducting the branch bank aforesaid is in controvention of any authority conferred upon it by its charter or by the act of Congress under which it stands incorporated, and without authority conferred upon it either by the act of Congress or by the laws of the State of Missouri, and that it is conducting said branch bank in violation of the laws of the
3 United States and of the State of Missouri, and that in maintaining said branch bank and conducting the business of a bank thereat, it has usurped and is usurping authority, powers and privileges which have been denied to it and withheld from it both by state and federal laws.

"Your informant further states that the said First National Bank is arranging to and proposes shortly to open other branch banks, some twelve or fifteen in number, at various points or locations in the City of St. Louis, and that it will do so unless prevented by order of this Court.

"Your informant further states that the Legislature of the State of Missouri, pursuant to the general policy of the people of the State of Missouri relative to the establishment of branch banks, and in conformity with the well fixed and settled rule of Congress to withhold the power of establishing branch banks from national banks, has by direct legislation prohibited the establishment of branch banks by state institutions, and that if respondent is permitted to continue in the operation of the branch bank already established and to establish other branch banks, other national banks in the State of Missouri will establish branches in the respective cities and counties of their domicile, all of which will work irreparable damage and injury to the banking business in the State of Missouri.

"Your informant further states no law of any character, state or federal, has been enacted governing or regulating the establishment and operation of branch banks in Missouri, and that if respondent herein is permitted to establish, maintain and operate branch banks, other national banks will exercise the same privilege without the necessary and wholesome safeguards, limitations and regu-
4 lations for the protection of the banking business and the public in general; that there is now pending in the Congress of the United States, and before the Committee on Banking and Currency, House Bill No. 6257, under which it is proposed to legalize the establishment of branch banks in those states which permit state banks to own and operate branch banks, and prohibit national banks from owning and establishing branch banks in those states which prohibit state banks from owning and operating branch banks; that said bill is regulatory in character, fixing and determining the minimum amount of capital for each branch bank and limiting the number of branch banks which may be owned and operated by any one banking institution; that respondent stands fully advised of the pendency of the aforesaid bill, as well as of the fixed policy of Congress relative to the establishment of branch banks as aforesaid, and that to permit respondent to continue in the usurpation of the powers and privileges hereinbefore complained of, particularly in the absence

of any wholesome and necessary regulation as provided in said proposed bill, will work great harm and injury not only to the banking interests of the State of Missouri, but as well to its industrial and general business activities and welfare.

"Your informant further states that if respondent is permitted to continue in the operation of the branch bank business, and other national banking associations follow in the usurpation of such privileges, the state banking institutions throughout the State of Missouri will suffer irreparable injury and be at all times threatened with the impending danger and evil of having national
5 banking associations domiciled in their respective counties establish branches in each and every town, city, village or hamlet within the boundaries of said counties, and that such usurpation of rights and privileges is not only contrary to the policy of the people of the State of Missouri relative to the general banking business, but would result in material loss and damage to the banking and business interests of the state.

"Wherefore, your informant prays the Court to make an order on the respondent requiring it to show by what warrant, right or authority it has established and is conducting the branch bank aforesaid, and by what warrant, right or authority it proposes to establish and conduct other branch banks; that pending the final determination of this cause the Court restrain and enjoin the respondent, its officers, agents and servants, from establishing and operating branch banks other than the one already established as aforesaid, and from carrying on a banking business at any place excepting at its regular banking house and excepting the branch bank already established, and that upon the final hearing of this cause respondent be ousted from the privilege of operating its said branch bank or any other branch banks, and from conducting a banking business at any place or location other than one banking house or office maintained by it for such purposes, and that such other and further orders and relief be granted as to the Court shall seem meet, just and proper." Jesse W. Barrett, Attorney-General. Merrill E. Otis, Assistant Attorney General. Sam B. Jeffries, Carter, Collins and Jones, Foristel and Eagleton, Marion C. Early, of Counsel.

6 And thereafter, on the 28th day of June, 1922, the following order was made and entered of record in said cause, to-wit:

[Title omitted.]

Now at this day, the Court having considered and fully understood the information in the nature of a quo warranto, heretofore filed herein by the said informant, doth order that an order to show cause issue herein directed to the said respondent, the said order to show cause to be returnable on the 28th day of July, 1922, in Court in Banc.

Which order to show cause, issued on the 28th day of June, 1922, is in the words and figures following, to-wit:

In the Supreme Court of Missouri, En Banc, April Term, 1922.

[Title omitted.]

Order to Show Cause.

[Filed June 28, 1922.]

"Whereas, Jesse W. Barrett, Attorney-General of the State of Missouri, has filed in the above-entitled cause an information in the nature of a quo warranto, a copy of which is hereto attached, charging that the above-named respondent, illegally and without authority of law, did, on or about the 15th day of June, 1922, open a branch bank for conducting a general banking business at No. 818 Olive street, St. Louis, Missouri, in a building separate, and at a distance, from its office and banking house located in the place specified in its organization certificate, and that it is and has been conducting said branch bank in violation of the laws of the United States and of the State of Missouri, and that in maintaining said branch bank and conducting the business of a bank thereat it has usurped and is usurping authority, powers and privileges denied to and withheld from it by both state and federal laws; and that the said respondent is arranging to and proposes to open other branch banks in the City of St. Louis.

7 "Now, therefore, the said respondent, First National Bank in St. Louis, a corporation, is hereby commanded to be and appear before the Supreme Court of Missouri in Banc on the 28th day of July 1922, and show by what warrant, right or authority it has established and is conducting the branch bank aforesaid, and by what warrant, right or authority it proposes to establish and conduct other branch banks, and then and there show cause why it should not be ousted from the privilege of operating its said branch bank, or any other branch bank, and from conducting a banking business thereat, as in said information prayed.

Witness my hand as Clerk of said Supreme Court and the seal of said Court hereto affixed. Done at my office in the City of Jefferson, this 28th day of June, 1922. J. D. Allen, Clerk, by A. L. Pryor, D. C. (Seal.)

And thereafter, and on the same day, to wit, the 28th day of June, 1922, the following temporary restraining order was made and entered of record in said cause, to wit:

[Title omitted.]

Temporary Restraining Order.

[Filed June 28, 1922.]

Now at this day, the Court having considered and fully understood the application heretofore filed by the said informant for a

restraining order against the said respondent, to restrain it, pending the final determination of this cause, from establishing and operating branch banks, it is ordered by the Court that, pending the final determination of this cause, the said respondent, First National Bank in St. Louis, a corporation, its officers, agents and servants, be restrained from establishing and operating branch banks, other than the branch bank already established by it, and from carrying on a banking business at any place excepting at its regular banking house and excepting at the branch bank already established by it, as aforesaid.

8 And thereafter, on the 23rd day of August, 1922, the said respondent filed its motion to dissolve the said temporary injunction, made and issued on the 28th day of June, 1922, which said motion to dissolve is in the words and figures following, to wit:

In the Supreme Court of Missouri, En Banc, April Term, 1922.

[Title omitted.]

Motion to Dissolve Temporary Injunction.

[Filed Aug. 23, 1922.]

Now comes the respondent, First National Bank in St. Louis, and, appearing specially for this purpose only, and not waiving its plea to the jurisdiction herein, moves the Court to dissolve the temporary injunction issued herein and, for grounds of said motion, states:

(1) That there is no authority in law for the issuance of said injunction by this Court;

(2) That United States Revised Statutes, Section 5242, also known as United States Compiled Statutes, Annotated, 1916, Section 9834, concerning national banks, provides that 'no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action or proceeding, in any state, county or municipal court;' and that the granting of such temporary injunction is in direct violation of such statute and the laws of the United States;

(3) That, as shown by the information filed herein and the record in this cause, the respondent is a national bank and within the protection of said statute, and that by procuring of said restraining order or temporary injunction in this cause, the petitioner herein is wrongfully and unlawfully attempting to interfere with the business, property and management of the respondent, and causing it great financial loss in its investments in branch agencies in the City of St. Louis.

Wherefore, the respondent prays that the temporary injunction or restraining order issued herein be set aside, vacated and dissolved by the Court. Jones, Hocker, Sullivan & Angert, Attorneys for Respondent.

Received copy of this motion this 23rd day of August, 1922. M. E. Otis, Asst. Atty. Gen.

9 And thereafter, on the 8th day of September, 1922, the said respondent filed in said cause its motion to quash and dismiss the "alternative writ" (order to show cause) herein, which said motion is in the words and figures following, to wit:

In the Supreme Court of Missouri, In Banc.

[Title omitted.]

Motion to Quash and Dismiss Alternative Writ.

[File Sept. 8, 1922.]

And now comes the respondent, and moves the Court to quash and dismiss the alternative writ herein, for the reasons following:

1. The State of Missouri possesses no power of visitation over the respondent, and is without authority to complain of any violation or alleged violation of the charter powers of respondent.

2. The Attorney-General of Missouri possesses no power of visitation over respondent, and is without authority to complain of any violation or alleged violation of the charter powers of respondent. Jones, Hocker, Sullivan & Angert, Attorneys for Respondent.

10 And thereafter, on the 24th day of October, 1922, the respondent filed in said cause its demurrer to the information herein, which said demurrer is in the words and figures following, to-wit:

In the Supreme Court of Missouri, en Banc, October Term, 1922.

[Title omitted.]

Demurrer.

[Filed Oct. 24, 1922.]

Now comes the respondent and demurs to the information filed herein, and for grounds of said demurrer states:

1. That said information does not state facts sufficient to entitle the informant or the State of Missouri to any relief.

2. That the information shows upon its face that this Court has no jurisdiction over the subject matter of this proceeding.

3. That the information shows upon its face that respondent is a national bank, organized under the laws of the United States, and subject only to the control and regulation of the Government of the United States, and that the informant has no authority to institute this proceeding, the Government of the United States or its proper

officers, only, being authorized to question the prerogative rights of the respondent.

Wherefore, respondent says that it ought not to be required to answer said information, and prays judgment sustaining this demurrer. Jones, Hocker, Sullivan & Angert, Attorneys for Respondent.

11 And thereafter, and on the 1st day of November, 1922 the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, en Banc, October Term, 1922.

[Title omitted.]

Argument and Submission.

[Nov. 1, 1922.]

Come now the said parties, by attorneys, and after argument herein, submit this cause to the court.

And thereafter, and on the 3rd day of March, 1923, the following further proceedings were had and entered of record in said cause, to-wit:

12 In the Supreme Court of Missouri, en Banc, October Term, 1922.

[Title omitted.]

Judgment.

[Filed Nov. 3, 1923.]

Now at this day, comes the State of Missouri, by Jesse W. Barrett, the Attorney-General, and comes also the said respondent, by attorney, and the Court here having considered the information in the nature of quo warranto filed herein, and the said respondent's demurrer thereto, and being now fully advised, doth find that the said respondent, illegally and without authority of law, did, on or about the 15th day of June, 1922, open a branch bank, for conducting a general banking business, at No. 818 Olive street, in the City of St. Louis, Missouri, in a building separate, and at a distance, from its office and banking house located in the place in said city specified in its organization certificate, and that it is and has been conducting said branch bank in violation of the laws of the United States and of the State of Missouri, and that in maintaining said branch bank and conducting the business of a bank thereat it has usurped and is usurping authority, powers and privileges denied it by the laws of the United States and of this State. It is therefore considered, ordered and adjudged by the Court that the said respondent, First Na-

tional Bank in St. Louis, be ousted from the privilege of operating its said branch bank, located at No. 818 Olive street, in the City of St. Louis, Missouri, or any other branch bank, and from conducting a banking business thereat, as prayed in the said information in the nature of quo warranto; and that the State of Missouri recover against the said respondent its costs and charges herein expended and have execution therefor. (Opinion filed.)

Which said opinion is in the words and figures following to-wit:

13 In the Supreme Court of Missouri, en Banc, October Term, 1922.

[Title omitted.]

Opinion, Walker, J.

This is an original proceeding in quo warranto to determine the authority of a national bank engaged in business in the city of St. Louis to establish and conduct a branch bank at another than its regular place of business in said city.

I. A national bank is an artificial legal entity, created to facilitate the transaction of fiscal affairs under the authority of the laws of the United States. Like other corporations, it possesses such powers as are granted to it by the act of its creation, or more comprehensively stated, which have been or may be conferred upon it by Congress within the limitations of the Federal Constitution. This reference as to the origin of its powers does not, as we shall subsequently show, prevent state legislation in regard thereto. Existing, as it necessarily does, by law, it possesses only such powers as are expressly granted or which may necessarily be implied for the effective discharge of its corporate functions. As to powers expressly granted, no difficulty need be encountered in defining their limitations. As to those incidental, it must appear, to authorize their exercise, that they are clearly within the scope and purview of the purpose for which the corporation was created. This rule is especially applicable when it is sought to invoke what are termed the powers of a corporation incident to it at common law; such application being authorized only when it is apparent that the power invoked is a necessary incident to the proper exercise of the corporation's existence or functions. (Kerens v. Trust Co., 283 Mo. l. c. 621; State ex inf. Mis-

14 souri Ath. & St. L. Clubs, 251 Mo. l. c. 599; Millinery Co. v. Trust Co., 251 Mo. l. c. 575.)

These rules are elementary in character to the extent that they may be termed horn-book law on this subject. They have been stated to emphasize their general application to all classes of corporations in the absence of statutes to the contrary.

While we have contented ourselves with the citation of cases in this behalf determined within our own jurisdiction, they assert a general doctrine which does not contravene the rulings of any court, state or national, when rightly considered. To illustrate: In Bullard v. Bank (18 Wall. l. c. 593) it was held that "the extent of the

powers of national banking associations is to be measured by the act of Congress under which such associations are organized."

In Logan etc. Bank v. Townsend (139 U. S. l. c. 73) it was announced with equal emphasis that "It is undoubtedly true, as contended by the defendant, that the National Bank Act is an enabling act for all associations organized under it, and that a national bank cannot rightfully exercise any powers except those expressly granted by that act, or such incidental powers as are necessary to carry on the business of banking for which it was established."

To a like effect are the following cases: Bowen v. Needles Nat. Bk. (94 Fed. 925); Commercial Nat. Bk. v. Firel (82 Fed. 799, 49 U. S. Ap. 596); Hanover Nat. Bk. v. Burlingame Nat. Bk. (109 Fed. 421, 48 C. C. A. 482); Hyde v. Equit. Life Assur. Soc. (116 N. Y. Sup. 219); Ocmulgee Riv. Lum. Co. v. Ocmulgee Val. Ry. Co. (251 Fed. 161); State v. Am. Sugar Ref. Co. (138 La. 1005); Somerville Water Co. v. Somerville (78 N. J. Eq. 199); Knapp v. Sup. Commandery (121 Tenn. 212).

Guided by these rules a reference to and a review of the laws creating national banks and defining their powers is of first consideration.

15 Persons desiring to form a national bank are required, among other things, under the act of Congress of June 3, 1864, to file with the Comptroller of the Currency a statement of the place where its operations of discount and deposit are to be carried on, designating the state, territory or district and the particular county, city, town or village. (Subdiv. 2, § 5134, p. 3455, 3 Comp. Stat. U. S.)

A subsequent section of the same act provides that the usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate. (§ 5190, p. 3486, 3 Comp Stat. U. S.)

No express power to establish a branch bank appears in either of these statutes. Section 5134, in requiring the certificate of organization to designate the county, city or town in which the bank is to be located, is intended for the information of the comptroller in enabling him to intelligently determine whether the authority sought to be exercised should be granted. While the banking act is silent on the subject, a construction of same is not unreasonable which clothes the comptroller with at least such discretion in the premises as will enable him to act intelligently or with a proper regard for the demands of business in approving or rejecting the articles of organization. Hence, a general designation of the proposed business location as provided in said section is all that is necessary.

The purpose of § 5190 is not for the information of the Comptroller, it being a matter with which he has no concern when he has granted the articles as to where the place of the business shall be located within the county, city or town. This is a matter to be determined by the board of directors in establishing the business. To render their act specific it must be confined to the terms of the statute, viz.: to "an office or banking house within the county, city or town" named in the articles. This location having been established,

it is within the contemplation of the statute that the power of
16 the bank is to be there exercised. Otherwise the words "an office or banking house" cease to be specific, and instead of being singular in number may be construed as plural, and thus permit the establishment of banks in as many places within the county, city or town as the judgment of the directors may prompt. Such a construction finds no resting place in reason. If followed it would, instead of centralizing and rendering more stable the powers of a bank, enable it, by multiplying its places of business, to subdivide and at the same time extend its powers in such manner as to stifle competition. Such a- effect was certainly never contemplated by the banking act.

II. We are more concerned however with an interpretation of the language of subdivision 7 of § 5136, granting incidental powers, whether literally or liberally construed than with the probable effect of its operation under the construction sought to be given to it by the respondent. If, as we have stated, the terms of § 5190 be unmistakable in limiting the location of the place of business, such location, so long as maintained, will under the terms of the statute, exclude by implication the establishment of a branch bank, the business of which is to be conducted under the authority of the original articles of organization. However, it is contended that the power to establish branches is authorized under § 5136. The language of subdivision 7 of that section provides, among other things, that the board of directors of a bank may, subject to law, exercise all such incidental powers as shall be necessary to carry on the banking business. Several preliminary assumptions are necessary before substantial color can be given to this contention. First, section 5190 must be so construed as to authorize the transaction of
a bank's business at offices or banking houses instead of at
17 "an office or banking house"; second, the establishment of a branch bank must be held to be the exercise of an incidental power; third, such power when exercised must be within the law; and, fourth, it must be necessary to the transaction of the banking business.

The first assumption we have discussed with the result that the unmistakable character of the words employed and the purpose to be accomplished did not in our opinion authorize such an interpretation of the section as to enable its terms to be read in the plural as well as the singular number. The second involves the question as to the meaning of incidental powers. The statute (subdiv. 7, § 5136) employes the word incidental, rather than the word implied in designating the power other than that expressly conferred on the board of directors. An incidental power, as we said in State ex inf. Harvey v. Missouri Ath. & St. L. Clubs (261 Mo. l. c. 599) is one directly and immediately appropriate to the execution of the powers expressly granted and exists only to enable the corporation to carry out the purpose of its creation. (Citing cases.)

An implied power is one that may be inferred from that granted, or as the Supreme Court of Massachusetts has said (Grant v. Marshall, 138 Mass. 228) it is a grant or reservation by implication

of law. In State ex inf. Harvey (supra) we defined an implied power more elaborately as one "possessed by a corporation not indispensably necessary to carry into effect others expressly granted and comprises all that is appropriate, convenient and suitable for that purpose, including as an incidental right a reasonable choice as to means to be employed in putting into practical effect a power of this character." Without chopping logic or refining distinctions as to these adjectival words, it will suffice to say that in statutes and judicial opinions they are frequently interchangeably used. (3 Thomp. Corp. 2nd ed., § 2105.) This need not concern us, however, in the determination of respondent's contention, as the statute uses the word incidental and to this we will give attention.

18 What, therefore, are the powers of a national bank "directly or immediately appropriate to the execution of the specific powers granted?" The provisions of Subdiv. 7, following the phrase conferring incidental powers upon the board of directors, furnish examples from which, by analogy, the scope of this character of powers may be determined. They include the discounting and negotiating of promissory notes, drafts, bills of exchange and other evidences of debt; the receiving of deposits; the buying and selling of exchange, coin and bullion; the loaning of money on personal security; and the obtaining, issuing and circulating of notes. While these powers are distinct and neither is a limitation upon either of the others, they cannot be otherwise held than as directly and immediately appropriate to the transaction of the banking business. Although they may not be such incidental powers as are given generally to all banking institutions, they are incidental to banks created under the National Bank Act. (Seligman v. Charlottesville Nat. Bk., 3 Hughes 647, 21 Fed. Cas. No. 12642.) While a national bank may lawfully do many things in securing and collecting its loans in the enforcement of its rights and the conservation of property previously acquired, the exercise of such powers is incidental in being necessary for the purpose of carrying into effect the powers expressly granted. (Morris v. Springfield Third Nat. Bk., 142 Fed. 25, 73 C. C. A. 211; Cooper v. Hill, 94 Fed. 582, 36 C. C. A. 402.) The cases cited are illustrative of the limitations upon the latitude given national banks, not in the character of acts they may primarily engage in as a business, but in the management and protection of property and property rights acquired in the usual banking transactions, including such minor incidental powers in addition as may be adapted to the ends in view.

In addition to those cited the trend of the cases defining the incidental powers of national banks is in harmony with the foregoing conclusion.

The apparent purpose for the establishment of branch
19 banks is to multiply the places of business of the principal bank and thereby increase the volume of same. As a manifestation of commercial progress, the effort may well be commended. That phase of the matter, however, is not under con-

sideration. It is a question of power and not progress that demands solution. Certainly it is in no sense essential to the exercise of any of the powers granted nor is it a necessary incident to the carrying on of the banking business within the meaning of the statute.

The third limitation necessary to be observed before an incidental power can be invoked by a national bank, is that it must be "within the law." The law referred to is the National Bank Act to which banks organized thereunder owe their existence and within the scope and purview of which they must exercise their functions. The sections of the act reviewed lend no countenance to the contention that the establishment of branch banks is within the scope and purview of these sections and hence not within the law.

The fourth and last limitation upon the exercise of incidental power by a board of directors required by subdivision 7 is that such power shall be necessary "to carry on the business of banking." In a review of the other conditions necessary to the exercise of power referred to, we have held that the carrying on of the banking business did not require the establishment of branch banks and hence that it was not within the terms of the statute.

III. An unambiguous statute, such as the National Bank Act, does not require the adventitious aid of subsequent kindred legislation to determine its meaning. Despite this fact where, as here, there is a general grant of power, however clear that grant may be, the enactment of subsequent legislation containing a specific kindred grant of power will afford at least persuasive support to the conclusion that the latter was not included within the former or the original grant. Such is the effect of the Act of Congress of March 3, 1865, now § 5155, 3 U. S. Comp. Stats. p. 3467. This act provides that any bank or banking institution organized under a state law and having branches, may in conformity with existing law become a national bank and retain its branches. In the passage of this act it is evident that the legislative construction of the original is that it did not authorize the establishment of branch banks. Otherwise the subsequent section 5155 would not have been enacted. A recognition of the limitations of the National Bank Act is evident from the fact that the right of a national bank to have branches as provided in said section is limited to states the banking laws of which authorize the establishment of branches.

The establishment by special acts of Congress of a branch bank at Chicago during the Columbia Exposition and at St. Louis during the Louisiana Purchase Exposition, affords further evidence of legislative construction of the National Bank Act, which excludes from its incidental powers the right to establish branch banks.

In addition, it is a well established rule of construction that a long continued interpretation of a statute by public officers charged with its execution, while not controlling upon the courts, is entitled to special consideration. (McAllister v. Cupples Station, 283 Mo. 115; State ex rel. Chick v. Davis, 273 Mo. 660; State ex rel. Kin. Tel.

Co. v. Roach, 269 Mo. 437; Ewing v. Vernon Co., 216 Mo. l. c. 689.)

Apropos of the foregoing, it is shown that the attorneys general of the United States have uniformly construed the National Bank Act as not authorizing the establishment of branch banks.

IV. Enough has been said to demonstrate the fact that neither by express terms or reasonable implication can it be held that national banks are authorized to establish branches in states which have not granted that authority to banking corporations doing business therein. This being true, it remains to be determined whether the processes of the state can be invoked to prevent the exercise of power by a national bank shown to be ultra vires under the law of its creation. That national banks are corporate entities
21 which owe their existence to Federal law alone and as such are subject to the paramount authority of the United States, there can be no question. Equally as well established is the fact that a state cannot through its legislative department define the duties of national banks or control their affairs whenever such attempted exercise of authority expressly conflicts with the law of the United States. (Davis v. Elmira Savings Bk., 161 U. S. 272; McClellan v. Chipman, 164 U. S. 356.)

The information filed herein by the Attorney-General does not involve the commission of an act in conflict with the laws of the United States nor does it tend to impair the efficiency of any agency of the National government. It cannot, therefore, be said to be in conflict with the rule above announced and hence does not violate it.

This conclusion finds ample support in a review of the National Bank Act alone; but if further reasons therefor are deemed necessary they may be found in an illuminating discussion by the Supreme Court of Kentucky (First Nat. Bk. v. Comm., 143 Ky. 816, 34 L. R. A. (N. S.) 54) defining the limits that may be placed upon the Federal control of national banks, or conversely the extent to which the state may exercise control over them. The state court ruled in the affirmative on this question. The objection was made that the bank was an agency of the Federal government for which Congress had provided a complete system of control and regulation, and that the state could not in any manner interfere with its affairs and that state laws applicable to banks incorporated within the state were inoperative as to national banks. The court held, in effect, that while a state cannot either by its constitution or legislation directly or indirectly regulate or control the organization or conduct of a national bank so as to interfere with the business for which it was created, the laws of the state applicable to banks and other corporations organized therein may be invoked against a national
22 bank when it attempts to exercise rights or do things outside the scope of the business it was created to conduct and which is not essential to its existence or efficiency; that when a national bank exceeds the purpose of its creation and goes beyond the scope of its functions the state may deal with such of its transactions as are in excess of the authority conferred upon it by Congress and in

violation of the laws of the state in the same manner as it would deal with the business or property of any other banking corporation.

The rule as thus announced is supported by the holding of the United States Supreme Court in the Davis case, supra, in which, after declaring the paramount authority of the Federal law over national banks, it was said: that "nothing in this opinion is intended to deny the operation of general and undiscriminating state laws on the control of national banks so long as such laws do not conflict with the letter or the objects and purposes of Congressional legislation."

A further ruling to like effect by the United States Supreme Court is found in the McClellan case, supra. In that case an insolvent debtor conveyed real estate to a national bank thereby giving it a preference. This act was assailed by the other creditors as in violation of a state statute. The bank resisted the right of the creditors as thus asserted, upon the ground that national banks, under the Federal laws, were authorized to take deeds to real estate to secure preexisting debts, and that the Massachusetts statute was in conflict with the act of Congress and, hence, inoperative. The Supreme Court held that the state law was not in conflict with the act of Congress and that the other creditors had a right to share in the property conveyed to the bank. The exhaustive manner in which the question was considered is shown in the following excerpt from the opinion: " 'National banks are subject to the laws of the state and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition
23 and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.' * * * Nor is there anything in the statutes of the State of Massachusetts here considered which in any way impairs the efficiency of national banks or frustrates the purpose for which they were created. No function of such banks is destroyed or hampered by allowing the banks to exercise the power to take real estate, provided only they do so under the same conditions and restrictions to which all the other citizens of the state are subjected, one of which limitations arises from the provisions of the state law which, in case of insolvency, seeks to forbid preferences between creditors. Of course, in the broadest sense, any limitation by a state on the making of contracts is a restraint upon the power of a national bank within the state to make such contracts; but the question which we determine is whether it is such a regulation as violates the act of Congress. As well might it be contended that any contract made by a national bank within a state, in violation of the state laws on the subject of minority or coverture, was valid because state laws were in conflict with the act of Congress, or impaired the power of the bank to perform its functions."

V. In this state the banking business can be conducted only by a corporation. Thus organized, the extent of its powers must, as we have said, be determined by the statute of its creation. The state

banking act gives express recognition to this rule in providing that banks, whether incorporated under Federal or state law, can transact only such business as is permitted by the laws of the United States or of the state (§ 11684, R. S. 1919). Branch banks, not having been permitted by the state law either by express terms or necessary implication, the well recognized canon of construction will authorize the exclusion of this power from those granted. Reliance upon this rule is, however, unnecessary in the presence of a subse-
24 quent section (§ 11737, R. S. 1919) in which it is provided "that no bank shall maintain in this state a branch bank or receive deposits or pay checks except in its own banking house." The attempt, therefore, of the respondent to establish a branch bank is not only an act in excess of its corporate powers but in violation of an express statute.

The writ of quo warranto invoked by the relator is a recognized right and an appropriate remedy under the circumstances. (State ex. inf. Attorney-General v. Standard Oil Co., 218 Mo. 1.) Upon an appeal to the Supreme Court of the United States in the Standard Oil case that court held (224 U. S. 276) that the proceeding by quo warranto which had been instituted in the state supreme court in that case by the attorney-general was authorized. Discussing the powers of the Missouri Supreme Court in the premises it was held that "Its decision and judgment necessarily imply that under that clause of the constitution it had jurisdiction of the subject-matter and authority to enter judgment of ouster and fine in civil quo warranto proceedings. That ruling is conclusive upon us, regardless of whether the judgment is civil or criminal, or both combined."

VI. The right of the attorney-general to institute this action having been established, the question arises, although it does not seem to be seriously contested, as to the tribunal in which it should be brought.

The 16th subdivision of § 24 of the National Judicial Code provides, among other things, that the United States District courts have original jurisdiction "of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the comptroller of the currency, or any receiver acting under his
25 direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the state in which they are respectively located."

The United States statutes further provide that national banks shall have power "to sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons." (U. S. R. S., § 5136; U. S. Comp. Stats., 1916, § 9661.)

Under § 5198 (3 Comp. Stat. p. 3493; 6 Fed. Stat. Ann., p. 928)

prescribing where suits may be brought against national banks, it is provided "that suits, actions and proceedings against any association under this title may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established, or in any state, county or municipal court in the county or city in which said association is located, having jurisdiction in similar cases."

Under the proviso of an act of Congress approved July 12, 1882 (U. S. Comp. Stat. 1916, § 9668), it is further provided "that the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking association may be doing business when such suit may be begun; and all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed."

From the foregoing it will be seen that, as this case does not fall within the inhibitions of the Federal statutes quoted, jurisdiction of same may be entertained by this court.

In Hermann v. Edwards (238 U. S. 137) the United States supreme Court construed subdivision 16 of §24 of the National
26 Code and held, as it must have held within the unmistakable meaning of said subdivision, that state courts were clothed with jurisdiction to hear and determine all cases against national banks except those exempted under said subdivision. The case at bar does not fall within those exemptions.

This is not a proceeding to deprive the respondent of any right or limit the exercise of any power conferred upon it by the laws of the United States; but to prevent it from committing an act in violation, under the established rules of construction, of the laws of its creation and expressly contravening a state statute.

The character of a judgment in quo warranto cases is largely within the discretion of the court and foreign corporations may, under numerous precedents, be prohibited by a general ouster from committing particular illegal acts. (State ex. inf. Attorney-General v. Standard Oil Co., 218 Mo. 1; State ex inf. Attorney-General v. Standard Oil Co., 194 Mo. l. c. 149; State ex inf. Attorney-General v. Armour Packing Co., 173 Mo. l. c. 366; State ex inf. Attorney-General v. Firemen's F. F. Ins. Co., 152 Mo. 1; State ex inf. Attorney-General v. Arkansas Lumber Co., 190 S. W. (Mo.) 894.)

In view of all of the foregoing, judgment of ouster as prayed in the pleadings is hereby ordered. All concur, except Ragland, J., not sitting. R. F. Walker, J.

27 In the Supreme Court of Missouri.

[Title omitted.]

Petition for and Order Allowing Writ of Error.

[Filed Mar. 6, 1923.]

Considering itself aggrieved by the final decision of the Supreme Court of the State of Missouri in rendering judgment against it in the case of State of Missouri, ex rel. Jesse W. Barrett, Attorney General of the State of Missouri, vs. First National Bank in St. Louis, No. 23,753, the plaintiff in error, First National Bank in St. Louis, prays a writ of error from the decision and judgment of the Supreme Court of Missouri in said cause to the Supreme Court of the United States and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith. James C. Jones, Frank H. Sullivan, Ralph T. Finley, Counsel for First National Bank in St. Louis, Plaintiff in Error.

28 STATE OF MISSOURI, *ss:*

Supreme Court.

Let the writ of error issue upon the execution of a bond by the First National Bank in St. Louis to the State of Missouri in the sum of $5,000.00; such bond, when approved, to act as a supersedeas.

Dated March 6, 1923. A. M. Woodson, Chief Justice Supreme Court of Missouri.

28½ [File endorsement omitted.]

29 In the Supreme Court of Missouri.

[Title omitted.]

Assignment of Errors.

[Filed Mar. 6, 1923.]

Plaintiff in error, First National Bank in St. Louis, complains of the State of Missouri, at the information of Jesse W. Barrett, Attorney General of the State of Missouri, and says there is manifest error in the record in the above cause and in the decision and judgment of the Supreme Court of Missouri, and for grounds of having the same reviewed in the Supreme Court of the United States, makes the following assignment of errors:

(1) The Supreme Court of Missouri was without jurisdiction to hear and determine this proceeding, or to award the relief sought by the State.

30 (2) The provisions of the Acts of Congress conferring jurisdiction on the Courts of the States, over actions against National Banking Associations (Section 57, Chapter 106, 13 Statutes at Large 116; and Section 24, Chapter 231, 36 Statutes at Large 1092) have no application to extraordinary, prerogative writs, such as here involved, and the Supreme Court of Missouri was without jurisdiction to entertain this proceeding.

(3) The Supreme Court of Missouri erred in holding and determining that the State of Missouri possessed visatorial powers over the plaintiff in error, with respect to the manner of its exercise of its franchise as a banking association under the laws of the United States.

(4) The Supreme Court of Missouri erred in holding and determining that the State of Missouri possessed the power to restrain the plaintiff in error by the writ of quo warranto, or a writ of that nature, in the exercise of a power claimed by the plaintiff in error to be granted it by the laws of the United States.

(5) The plaintiff in error being a banking association, organized and existing under the laws of the United States, and claiming and asserting under the Acts of Congress relating to banking associations so organized the right to establish branch banking offices within the limits of the City of St. Louis (its place of business designated in its charter), only the Government of the United

31 States possesses the power to restrain the plaintiff in error in respect thereto, and the Supreme Court of Missouri erred in determining otherwise.

(6) The franchise or right asserted by the plaintiff in error (of having branch offices or banks in the City designated in its Articles of Association as its place of business) being one granted or grantable only by the Government of the United States, therefore, only the Government of the United States has the right or power to restrain the plaintiff in error in the use of such asserted franchise or right, and the Supreme Court of Missouri is in error in holding and determining that the State of Missouri has the right so to do, in the manner in which it is attempted in this case.

(7) The plaintiff in error having been created a banking association under the laws of the United States, the State of Missouri may not control the plaintiff in error in the exercise of its corporate franchises, except to the extent authorized by Act of Congress, and such control, in the manner in which it is attempted in this case, has not been so authorized.

(8) Neither the State of Missouri nor the Attorney General of the State of Missouri had the power or authority to question or attack the right of plaintiff in error under its charter and the laws of the United States to establish and operate branch offices or

32 banks in the City of St. Louis, State of Missouri.

(9) Under its charter and the Acts of Congress relating to National Banking Associations, the plaintiff in error was and is possessed of power to establish and maintain branch offices or banks within the limits of the City of St. Louis, in the State of Missouri,

and the Supreme Court of Missouri erred in holding and determining to the contrary.

For which errors plaintiff in error, First National Bank in St. Louis, prays that the said judgment of the Supreme Court of Missouri may be in all things reversed, set aside and for naught held, and for such other and further relief as to the Court shall seem meet and just. James C. Jones, Frank H. Sullivan, Ralph T. Finley, Counsel for First National Bank in St. Louis, Plaintiff in Error.

32½ [File endorsement omitted.]

33 **Writ of Error.**

[Filed Mar. 6, 1923.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court, State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Missouri at the information of Jesse W. Barrett, Attorney-General of the State of Missouri, and First National Bank in St. Louis, a National Banking Association, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened, to the great damage of the said First National Bank in St. Louis, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, dis-

34 tinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 6th day of March, in the year of our Lord one thousand nine hundred and twenty-three. Edwin R. Durham, Clerk, by F. J. Framme, D. C., Clerk District Court United States for the Central Division for the Western Judicial District of Missouri. [Seal

of the United States District Court of Missouri, Central Division, Western District.]

Allowed March 6th, 1923. A. M. Woodson, Chief Justice Supreme Court of the State of Missouri.

[File endorsement omitted.]

35 **Return to Writ of Error.**

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ of error, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the case of State of Missouri by Jesse W. Barrett, Attorney General of the State of Missouri, Ex Inf., vs. First National Bank in St. Louis, Respondent, No. 23,753, together with all things concerning the same, so far as called for in the Præcipe filed by respondent, First National Bank in St. Louis, herein.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court of Missouri, this 19th day of March, 1923. J. D. Allen, Clerk of the Supreme Court of the State of Missouri. [Seal of the Supreme Court of Missouri.]

35½ In the Supreme Court of Missouri.

[Title omitted.]

Bond on Writ of Error.

Know all men by these presents, that we, First National Bank in St. Louis, as Principal, and St. Louis Union Trust Company, as Surety, are held and firmly bound unto the State of Missouri in the sum of Five Thousand Dollars ($5,000.00), to be paid to the said State of Missouri, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of March, 1923.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to
35a reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Missouri:

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect. First National Bank in St. Louis, by F. O. Watts. Attest, J. S. Calfee, Secretary. [Seal.] St. Louis Union Trust Company, by Isaac H. Orr. Attest: Wallis G. Rowe, Secretary. [Seal.]

Bond approved and to operate as a supersedeas. Dated March 6th, 1923. A. M. Woodson, Chief Justice of the Supreme Court of the State of Missouri.

36 & 37 **Citation and Service.**

[Filed Mar. 6, 1923.]

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Missouri, wherein the First National Bank in St. Louis is plaintiff in error and the State of Missouri at the information of Jesse W. Barrett, Attorney General of the State of Missouri, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Missouri, this 6th day of Mar., 1923. A. M. Woodson, Chief Justice of the Supreme Court of the State of Missouri. Attest: J. D. Allen, Clerk Supreme Court, State of Missouri.

38 [File endorsement omitted.]

The State of Missouri, by the undersigned, Jesse W. Barrett, Attorney General of the State of Missouri, hereby acknowledges due service of the within citation. Jeff. City, March 6, 1923. Jesse W. Barrett, Attorney General, by Merrill E. Otis, Asst. Atty. Gen'l.

39 In the Supreme Court of Missouri.

[Title omitted.]

Præcipe for Transcript.

[Filed Mar. 8, 1923.]

To the Clerk of the Supreme Court of Missouri:

You will please prepare a certified copy of the transcript of the record upon the writ of error allowed in the above entitled cause on the 6th day of March, 1923, for a review of the judgment in said cause by the Supreme Court of the United States and include therein the following papers and documents:

1. The information in the nature of quo warranto filed herein on the 27th day of June, 1922.
2. Order to show cause issued herein on the 28th day of June, 1922.
3. Temporary restraining order entered herein on the 28th day of June, 1922.
4. Motion of respondent filed August 23, 1922, to dissolve the temporary injunction issued herein.
40 & 41 5. Motion of respondent filed September 8, 1922, to quash and dismiss the alternative writ or order to show cause.
6. Demurrer filed by the respondent herein on the 24th day of October, 1922, to the information filed herein.
7. The submission of said cause to the Court.
8. Opinion of the Supreme Court of Missouri.
9. Judgment of the Supreme Court of Missouri.
10. Original petition for writ of error and order allowing same.
11. Original assignment of errors.
12. Copy of supersedeas bond.
13. Original citation on writ of error and acknowledgment of service.
14. Original writ of error with allowance thereof.
15. Return to the writ of error.
16. Your certificate of lodgment.
17. Præcipe for transcript.
18. Your certificate of authentication of the record.

James C. Jones, Frank H. Sullivan, James C. Jones, Jr., Attorneys for First National Bank in St. Louis, Respondent.

Service of the foregoing præcipe for transcript is hereby acknowledged on behalf of the State of Missouri this 8th day of March, 1923. Jesse W. Barrett, Attorney General.

42 [File endorsement omitted].

43 **Certificate of Lodgment.**

Supreme Court, State of Missouri, ss.

I, J. D. Allen, Clerk of the Supreme Court of Missouri, do hereby certify that there were lodged with me as such Clerk on March 6th, 1923, in the matter of State, ex rel. Barrett, Attorney General, Relator, vs. First National Bank in St. Louis, Respondent:

1. The original bond, of which a copy is herein set forth.
2. Two copies of the writ of error, one for the relator and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Jefferson City, Missouri, this 6th day of March, 1923. J. D. Allen, Clerk Supreme Court of Missouri. [Seal of the Supreme Court of Missouri.]

44 **Clerk's Certificate to Transcript.**

Supreme Court, State of Missouri, ss.

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the foregoing is a full, true and complete transcript of the record, proceedings and orders in the case of State of Missouri by Jesse W. Barrett, Attorney-General of the State of Missouri, Relator, vs. First National Bank in St. Louis, Respondent, No. 23,753, so far as called for by the Præcipe filed herein by Respondent, First National Bank in St. Louis, on the 8th day of March, 1923, and made a part hereof as fully and completedly as the same appear of record or on file in my office.

I do further certify that the original writ of error, together with my return thereto, and the original citation and acknowledgment of service thereon are hereto attached and herewith returned.

I do further certify that no Præcipe for any additional portions of the record herein has been filed by the State of Missouri, the Relator herein, up to the time of the making of this certificate.

In testimony whereof, I have hereto set my hand and affixed the seal of said Supreme Court, at my office in the City of Jefferson, State as aforesaid, this 19th day of March, 1923. J. D. Allen, Clerk of the Supreme Court of the State of Missouri. [Seal of the Supreme Court of Missouri.]

Endorsed on cover: File No. 29,469. Missouri Supreme Court. Term No. 919. First National Bank in St. Louis, plaintiff in error, vs. State of Missouri at the information of Jesse W. Barrett, attorney general. Filed March 22nd, 1923. File No. 29,469.